IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 24852 of 2007(H)

AGAINST THE ORDER DATED 24/07/2007 IN IA.127/2007,IA.511/2006 IN OS.130/1997 of MUNI-MAGI.COURT,PERINTHALMANNA

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PETITIONER:

PURAYATH ABU, S/O.LATE PURAYATH ALIKUTTY
ELAMKULAM AMSOM,.KUNNAKKAVU DESOM.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. PURAYATH DECEASED ALIKUTTY'S DAUGHTER PATHUMMA,KARALMANNA AMSOM DESOM,PERINTALMANNA.

2. KUNHIKATHIYA,W/O.CHAKKACHAN MUHAMMED, PUZHAKKATTIRI AMSOM,KATTILASSERI DESOM, PERINTALMANNA TALUK.

3. CHOLAYIL ISMAIOL'S SON KUTTY MAMMU MARAYAMANGALAM AMSOM DESOM,OTTAPPALAM TALUK.

4. CHILDREN-FATHIMA SUHARA, MARAYAMANGALAM AMSOM DESOM, OTTAPPALAM TALUK.

5. ISMAIL, MARAYAMANGALAM AMSOM DESOM, OTTAPPALAM TALUK.

6. SHEMIRA, MARAYAMANGALAM AMSOM DESOM, OTTAPALAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C).No. 24852 OF 2007 h

Dated this the 20th August, 2007.

JUDGMENT

This writ petition is preferred against the order refusing to remit the commissioner's plan and report. The suit is one for partition. A commissioner was appointed in the final decree proceedings. He had submitted a plan and report. The first respondent in the final decree application is the writ petitioner before me and the commissioner has suggested to allot plot A with Kuzhikoors and tharavad house and while doing so he is bound to pay an amount of Rs.306.40 to respondents towards equalisation of shares. Learned counsel for the writ petitioner submits before me that the valuation shown for the trees which is proposed to be allotted to him is higher than what is shown for the same aged trees in the other schedule. The commissioner is a person who had inspected the property and seen the trees. It is also a well-known fact that some trees which are properly looked after and which are standing in a more fertile land will be having a better growth than the trees which are standing in not so fertile land or where it is under some shade or otherwise. The commissioner has gone and inspected the property. By remitting the commissioner's report it will not improve the

situation. Similarly for the tharavad house the valuation is shown as only Rs.40,000/-. If it is incorrect it can be proved by adducing evidence and not by remitting the commissioner's plan and report. So, I do not find any ground to remit the commissioner's plan and report but I make it clear that the writ petitioner is at liberty to adduce evidence regarding the valuation shown for the trees as well as for the house. Regarding the acquisition also he may adduce evidence and the court may decide it in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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